

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRANDI M.,

Plaintiff,

v.

5:21-CV-0435
(ML)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP
Counsel for the Plaintiff
250 South Clinton Street - Suite 210
Syracuse, New York 13202

CHRISTOPHER MILLIMAN, ESQ.

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203

NATASHA OELTJEN, ESQ.
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

in connection with those motions on September 26, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 12) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 15) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 27, 2022
Binghamton, New York



Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M

vs.

5:21-CV-0435

COMMISSIONER OF SOCIAL SECURITY

DECISION AND ORDER

September 26, 2022

The HONORABLE MIROSLAV LOVRIC,
DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: CHRISTOPHER MILLIMAN, ESQ.

For Defendant: NATASHA OELTJEN, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901*

1 THE COURT: All right, the Court's going to begin
2 its analysis and decision as follows: Plaintiff has
3 commenced this proceeding pursuant to Title 42 United States
4 Code Section 405(g) to challenge the adverse determination
5 by the Commissioner of Social Security finding that she was
6 not disabled at the relevant times and therefore ineligible
7 for the benefits that she sought.

8 By way of background, the Court notes as follows:
9 Plaintiff was born in 1981. She is currently approximately
10 41 years of age. She was approximately 36 years old on
11 August 1, 2018, the alleged onset date. Plaintiff lives
12 with her mother and minor child. Plaintiff is approximately
13 5 feet 3 inches in height and weighs approximately 160
14 pounds. Plaintiff has a GED and can communicate in English.

15 By way of procedure, the Court notes the following
16 history of this case: Plaintiff applied for Title II
17 benefits on September 10, 2018, alleging disability
18 beginning on August 1 of 2018. Administrative Law Judge
19 Peter Jung conducted a hearing on March 11, 2020, to address
20 plaintiff's application for benefits. ALJ Jung issued an
21 unfavorable decision on March 30th of 2020. That became a
22 final determination of the agency on February 12th, 2021,
23 when the Social Security Administration Appeals Council
24 denied plaintiff's application for review. This action was
25 commenced on April 16, 2021, and it is timely.

1 Now, in his decision, ALJ Jung applied the
2 familiar five-step test for determining
3 disability.

4 At step one, the ALJ concluded that plaintiff had
5 not engaged in substantial gainful activity since August 1
6 of 2018, the alleged onset date.

7 At step two, the ALJ concluded that plaintiff
8 suffers from the following severe impairments: Major
9 depressive disorder, generalized anxiety disorder, and
10 alcohol use disorder. The ALJ also considered plaintiff's
11 nonsevere impairments including gastroesophageal reflux
12 disorder, hepatomegaly, hyperlipidemia, hyperglycemia, and
13 obesity.

14 At step three, ALJ Jung concluded that plaintiff's
15 conditions do not meet or medically equal any of the listed
16 presumptively disabling conditions set forth in the
17 Commissioner's regulations, and the ALJ focused on the
18 following listings: Listing 12.04, which deals with
19 depressive, bipolar, and related disorders; listing 12.06,
20 dealing with anxiety and obsessive compulsive disorders.
21 When considering the paragraph B criteria, the ALJ concluded
22 that plaintiff had moderate limitations in each of the four
23 functional areas. In addition, the ALJ concluded that the
24 evidence failed to establish paragraph C criteria.

25 Next, the ALJ next determined that plaintiff

1 retains the residual functional capacity to perform a full
2 range of work at all exertional levels but with the
3 nonexertional limitations of performance of simple,
4 repetitive, routine tasks with no -- no supervisory duties.
5 The ALJ also concluded plaintiff is limited to making simple
6 work-related decision and is limited to tolerating few,
7 infrequent changes in a routine work setting. The ALJ also
8 concluded that plaintiff can occasionally interact with
9 supervisors and coworkers but can never interact with the
10 public.

11 At step four, the ALJ concluded that plaintiff is
12 unable to perform any past relevant work as an
13 administrative/general office clerk.

14 At step five, the ALJ concluded that based on the
15 testimony of the vocational expert and considering
16 plaintiff's age, education, work experience, and RFC that
17 there are jobs that exist in significant numbers in the
18 national economy that plaintiff can perform. More
19 specifically, and the vocational expert testified that
20 plaintiff could perform the requirements of representative
21 occupations including folder, marker, and garment sorter.
22 As a result, the ALJ concluded that plaintiff had not been
23 under a disability as defined in the Social Security Act
24 from August 1, 2018 through the date of the ALJ's decision.

25 Now, as the parties know, this Court's functional

1 role in this case is limited and extremely deferential. I
2 must determine whether correct legal principles were applied
3 and whether the determination is supported by substantial
4 evidence, defined as such relevant evidence as a reasonable
5 mind would find sufficient to support a conclusion. As the
6 Second Circuit noted in *Brault V. Social Security*
7 *Administration Commissioner*, found at 683 F.3d 443, a 2012
8 case, the Circuit therein stated this standard is demanding,
9 more so than the clearly erroneous standard. The Second
10 Circuit noted in *Brault* that once there is a finding of
11 fact, that fact can be rejected only if a reasonable
12 fact-finder would have to conclude otherwise.

13 Now, on appeal before this Court, the plaintiff
14 raises one contention. The plaintiff argues that the ALJ's
15 RFC determination is unsupported by substantial evidence
16 because the ALJ failed to properly evaluate the opinions of
17 Dr. Grassl and NPP Blum.

18 The Court begins its analysis as follows: For the
19 reasons set forth in defendant's brief, I find that
20 substantial evidence supports the ALJ's evaluation of the
21 medical opinions.

22 With respect to the opinion of Dr. Grassl, the
23 Court notes as follows: And as defendant highlighted,
24 Dr. Gassl submitted two separate questionnaires regarding
25 plaintiff's functioning on the same date; on May 20th of

1 2019. Compare docket number 11 at 243 to 246, transcript
2 page 240 to 243, compare -- compare that questionnaire with
3 docket number 11 at 247 to 249, transcript pages 244 to 246.
4 These opinions conflicted with one another. In one opinion
5 Dr. Grassl opined that plaintiff had a marked limitation in
6 her ability to sustain concentration and perform a task at a
7 consistent pace; to sustain an ordinary routine and regular
8 attendance at work; and regulate emotions, control behavior,
9 and maintain well-being. This opinion of Dr. Grassl can be
10 found at docket 11 at 245, transcript page 242. In the
11 other opinion Dr. Grassl opined that plaintiff had no
12 impairment affecting the ability to concentrate, persist, or
13 maintain pace, and the ability to adapt or manage herself.
14 See docket number 11 at 248, transcript page 245. In
15 addition, Dr. Grassl's examination of plaintiff showed
16 plaintiff's attention and concentration intact. See docket
17 number 11 at 244, transcript pages -- page 241. Moreover,
18 Dr. Grassl's examination showed a cooperative demeanor,
19 appropriate dress, well-groomed personal hygiene, and a
20 coherent and goal-directed thought process, and which
21 diverge from a marked limitation in plaintiff's ability to
22 regulate emotions, control behavior, or maintain her
23 well-being.

24 The Court also notes further, as defendant
25 discussed in her brief, although plaintiff's mood

1 fluctuated, she consistently exhibited calm or normal
2 behavior, normal speech, and good judgment.

3 The ALJ did not err in considering Dr. Grassl's
4 examination findings when evaluating her opinion. As
5 defendants set forth, the Second Circuit's analysis in
6 Stacey centered around the treating source rule, which is
7 not applicable in this case.

8 With respect to the opinion of Dr. Blum, as the
9 ALJ noted, Mr. Blum identified a host of symptoms that
10 plaintiff purportedly experienced such as suicidal thoughts,
11 but the records indicate that plaintiff routinely denied
12 suicidal thoughts. The ALJ also noted that plaintiff had
13 only been seen nine times by any mental health treatment
14 provider since her alleged disability onset date in August
15 of 2018.

16 This Court notes that although plaintiff was
17 hospitalized for suicidal thoughts at some point, that
18 occurred before the alleged onset date.

19 Despite some evidence in the record which may
20 support plaintiff's contentions, substantial evidence
21 supports the ALJ's conclusion that Mr. Blum's opinion, which
22 contained severe limitations, was unsupported and
23 inconsistent with the record as a whole.

24 With respect to the opinion of Dr. Hennessey, the
25 Court notes, and as defendants set forth, quote, the

1 critical question is whether the Social Security
2 Administration would still find the claimant disabled if she
3 stopped using drugs or alcohol, end quote. See Cage versus
4 Commissioner of Social Security, that's found at 692 F.3d
5 118, page 123, and that's a Second Circuit 2012 case, and
6 therein the Second Circuit quoting 20 CFR Section
7 416.935(b)(1). In making a determination, the ALJ first
8 determines whether physical and mental limitations would
9 remain if the plaintiff stopped using drugs or alcohol, and
10 if so, whether those remaining limitations are disabling on
11 their own. See case Tyler M. V. Saul, 19-CV-0426, that can
12 be found at 2020 West Law 5258344 at page 4. And that's a
13 Northern District New York September 3rd, 2020 case issued
14 by Magistrate Judge Hummel, and therein Judge Hummel citing
15 20 CFR sections 404.153(b)(2), also citing 416.935(b)(2).
16 And, quote, if not, the substance abuse is considered
17 material and the plaintiff is not eligible for benefits
18 under the Social Security Act, end quote. See again
19 Tyler M., 2020 West Law 5258344 at page 4, and again citing
20 20 CFR Sections 404.1535(b)(2)(i), and also Section
21 416.935(b)(2)(i).

22 Dr. Hennessey's opined limitations were within one
23 year of plaintiff's alleged onset date based on the
24 assumptions that plaintiff continue with the outpatient
25 treatment and maintain sobriety. Contrary to plaintiff's

1 contention that Dr. Hennessey's opinion was speculative, the
2 ALJ was required to consider what plaintiff's limitations
3 would be if she abstained from alcohol. Moreover, only
4 impairments that last or are expected to last for a
5 continuous period of at least 12 months can be found
6 disabling, whereas Dr. Hennessey opined that plaintiff could
7 have no more than moderate limitations within one year of
8 her alleged onset date.

9 Finally, I find that for the reasons set forth in
10 defendant's brief, the ALJ did not err in assessing an RFC
11 that contained more limitations than those opined by
12 Dr. Hennessey, despite the fact that the RFC did not match
13 any single medical opinion.

14 Based upon this analysis, I therefore conclude
15 plaintiff's motion for judgment on the pleadings is denied.
16 Defendant's motion for judgment on the pleadings is granted.
17 Plaintiff's complaint is hereby dismissed. And the
18 Commissioner's decision denying plaintiff benefits is
19 hereby affirmed.

20 This constitutes the analysis and decision of this
21 Court.

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